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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF APRIL, 1998.

BEFORE

THE HON'BLE MR. JUSTICE S. R. VENKATESHA MURTHY

L. R. R. P. No. 4122/1989 c/w 4459/1989

In L. R. R. P. No. 4122/1989

BETWEEN:-

Bhageerathi W/o Ram Bhat
Since deceased by L. R.
Varadha W/o Ganapathi Hegde
aged about 40 years,
agriculturist, R/o Taggin Balagar
Siddapur Taluk,
U. K. District.

..PETITIONER

(By Sri C. B. Shrinivasa, Sri B. V. Krishna Swamy
Rao, and Sri S. R. Hegde Hudlamane, Advocates)

In L. R. R. P. No. 4459/1989

BETWEEN:-

Laxminarayana Timmayya Hegde,
Age: Major, agriculturist,
r/o Taggin Balagar Village
in Siddapur Taluk,
U. K. District.

..PETITIONER

(By Sri S. R. Hegde Hudlamane, Advocate)

AND:-

1. The Land Tribunal Siddapur represented by its Chairman Siddapur Taluk, U.K. Dist.
2. The State of Karnataka represented by its Secretary Revenue Department, Vidhana Soudha, Bangalore.
3. Ramachandra Venkatraman Hegde, age Major, Agriculturist, R/o Hosabale, Tataguni Village Sirsi Taluk, U.K. Dist.

RESPONDENTS ARE
..COMMON IN BOTH THE
PETITIONS.

(By Sri K.I. Bhatta, Adv., for R-3, and
Smt. Shanthakumari, HGP for R1 and R2)

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These C.R.P's. filed u/s 121-A of the Karnataka Land Reforms Act, against the order dated 9.6.1989 passed in D.A.A.-AP 47/87 on the file of the District Addl. Land Reforms Appellate Authority, Sirsi, allowing the appeal and setting aside the order passed by the Land Tribunal, Siddapur U.K. in TNC DSR 2-1879-7129 dated & 7.9.87, and etc .

These petitions coming up for hearing on this day, the Court made the following:

ORDER

These two revisions are by a person who claim to be a sub tenant under the mulgenidar ^{and} an alienate pendentelite from the petitioner in

respect of lands in Tagginabalagar village. Ganapathi, Rama and Bhagirathi are brothers and sisters. Ganapathi and Rama were mulgenidars. Rama the brother died unmarried. Ganapathi died leaving behind his widow Mahalkali. On 25.1.1943 Mahalkali transferred the half mulgeni rights in favour of Bhagirathi.

Father of

2./Ramachandra Venkatraman Hegde (R.)


the owner of the properties in question had taken mortgage of the mulgeni rights from Ganapathi and Rama on 22.11.1922. Ramachandra Venkatraman Hegde instituted O.S.95/1932 against Ganapathi and Rama for recovery of the mortgage money and obtained a decree for recovery of the same on 14.4.1932. Ex.486/1936 was filed for sale of the mulgeni rights and the decree holder on 13.11.1943 purchased the mulgeni rights in the Court auction. Having thus secured the mulgeni right the decree-holder sued out execution and obtain possession on 14.6.1947. Bhagirathi who had secured the half mulgeni rights from the widow of Ganapathi made a tenancy application No.176/1947 before the Mamlthedar complaining

of interference with her possession of the property in question by the third respondent and the same was dismissed by the Tahsildar on 30.9.1947. Again Bhagirathi made application No.145-100-54-55 before the Mamalthedar and the Mamalthedar granted declaration on 10.8.1959 that she had the mulgeni right in the land. Thereafter the matter came up to the High Court in C.R.P.29/1962. The application filed by Bhagirathi for declaration of her status as a tenant was rejected by this Court as not maintainable before the Mamalthedar.

3. Meanwhile the third respondent filed an application for injunction against Bhagirathi claiming that she was a trespasser. The Mamalthedar rejected the petition on the ground that the third respondent has secured possession in execution of the mortgage decree. Thereafter the third respondent instituted O.S.162/1953 for possession of the land on the ground that Bhagirathi had trespassed on the land and occupied it. The suit was numbered as O.S.1/1972 and on trial was decreed as prayed for. The appeal filed by Bhagirathi R.A.192/1972 was dismissed confirming

the judgment and decree of the trial Court. Bhagirathi's appeal in this Court in R.S.A. No.400/1974 was disposed of on 7.1.1980 directing the trial Court to make a reference to the Land Tribunal for adjudication of the claim of Bhagirathi to tenancy of the property. Admittedly the third respondent lost possession of the lands within one year of the date of delivery through court and that is how he sought possession in the Civil Court.


4. On a reference by the Civil Court to the Land Tribunal the Land Tribunal conferred occupancy rights on the petitioner-Bhagirathi on the ground that she was in possession of the land as on 1.3.1974. Third third respondent appealed to the Land Reforms Appellate Authority, Sirsi in D.A.A.A.47/1987. The Land Reforms Appellate Authority by its order dated 9.6.1989 set aside the order of the Land Tribunal and held that the application for occupancy rights filed by the petitioner herein-Bhagirathi and the second respondent before the Land Reforms Appellate Authority, Laxminarayana Thimmalaiah Hegde, were not entitled to occupancy rights. In these revisions the decision of the Land



Reforms Appellate Authority is assailed. The contention on behalf of the petitioner is that mulgeni rights of Mahalakali were assigned to Bhagirathi and on the day she was sought to be dispossessed by a decree of the Court, the Bombay Tenancy Act of 1939 had come into force and only the Mamalthedar could evict the petitioner-Bhagirathi. Consequently, the dispossession by the Court was of no effect and Bhagirathi continued to be in possession of the land as a mulgenidar entitled to registration as an occupant under the Land Reforms Act.

5. It is now beyond controversy that the Bombay Tenancy Act of 1938 was made applicable to different districts of the then State of Bombay on various dates and the entire State was covered only about 11.4.1946. The contention of the petitioner that Mamalthedar was the only authority to dispossess a tenant is based on Section 11 of the Bombay Tenancy Act. Section 11 of the Bombay Tenancy Act protects only rights conferred on a protected tenant. The case that is sought to be made out by the petitioner could

not come within the ambit of Section 11 of the Bombay Tenancy Act had to be ~~conceded~~ by the ~~comndel~~ for the petitioner after a considerable argument. It has to be noticed that the Bombay Tenancy Act of 1939 would be applicable to tenancy subsisting on the day the Act came into force. It was not disputed, and indeed it cannot be disputed, that the Mulgeni rights as on the day it was sold in Court auction could be validly sold there being no prohibition in law then existing against sale of such mulgeni right. Mahakali the legal representative of the deceased mulgenidar after the decree and before it was put into execution parted with half the mulgeni right in favour of Bhagirathi. When the entire right was sold there was nothing left for Bhagirathi to agitate. All that Bhagirathi secured by the settlement in her favour was the right to pay the mortgage money and save the property at any time before the sale stood confirmed. When once the sale stood confirmed the mulgeni rights or the ~~predecessors~~ in title of Bhagirathi and Mahalakali stood vested in the third respondent and there was no semblance of right ^{left in} to Bhagirathi



to ^{im} express her possession within a measure of lawfulness. Thus it is clear that no provision of the Bombay Tenancy Act operated as a bar against the sale or delivery of the property which was the subject of the mulgeni tenancy. When once the relation of mulgenidar and the Muldar vested in the same person, as in this case by the purchase of the mulgeni rights by the third respondent, all rights of Mahakali and her successors in interest stood extinguished. When once the Court delivered possession of the property to ~~the decree holder~~ ^{the decree holder} ~~the relationship of land lord and tenant stood wiped out.~~ ^{the relationship of land lord and tenant stood wiped out.} ~~claiming a mulgeni right, if subsequently~~ Bhagirathi tresspass^{ed} on the land in assertion of an alleged mulgeni right such act of tresspass would not invest Bhagirathi's possession with any lawfulness. Indeed that is the reason why Bhagirathi also sought to set up ^a subsequent ^{to sustain} tenancy in her possession, which was not pressed into consideration in these revisions. Having regard to these circumstances, it is clear that Bhagirathi's claim to mulgeni rights under Mahalakali was unsustainable. The Land Reforms

Appellate Authority rights held that Bhagirathi's claim was untenable. If Bhagirathi could not and did not secure any right, the claim through Bhagirathi ^{by} Lakshminarayana Hegde can get no better title. Consequently both the revisions have to fail. No other grounds were urged against the order of the Land Reforms Appellate Authority. Revisions are therefore, dismissed with costs.

Sd/-
JUDGE

G/-